

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
IN THE FEDERAL TERRITORY, MALAYSIA  
CIVIL SUIT NO: WA – 22NCvC – 143 – 03/2023

BETWEEN

KOPERASI AMANAH PELABURAN BERHAD ... PLAINTIFF

AND

BANK KERJASAMA  
RAKYAT MALAYSIA BERHAD ... DEFENDANT

**JUDGMENT**  
(Enclosure 73)

**Introduction**

[1] The present application before this court was the defendant's application pursuant to Order 33 rules 2 and 5 of the Rules of Court 2012, seeking to determine certain questions of law which may dispose of the whole suit without going for trial.

[2] The primary question was whether the plaintiff's current action was barred by res judicata. The plaintiff sought to set aside orders made in the High Court on 25.06.2021 ("Impugned High Court Order"). The plaintiff had previously attempted to set aside these same orders. This earlier attempt was made through Originating Summons No. WA-24NCVC-1705-09/2021 ("OS 1705"). The High Court dismissed that application on 24.09.2021.

[3] After reviewing the application and the affidavits and considering the submissions of both parties, I found merit in the defendant's application. The application was therefore allowed with costs. The plaintiff being dissatisfied with the decision, appealed to the Court of Appeal.

**Brief matrix of facts**

[4] The dispute between the parties stemmed from a tenancy agreement dated 04.08.2017 for premises known as Lot 18.01 situated on Level 18 of Menara Kembar Bank Rakyat ("Demised Premises"). The tenancy was for a period of three years from 01.06.2017 to 31.05.2020.



[5] Prior to the expiry of the tenancy, disagreements arose regarding the renewal terms. This led to the plaintiff initiating proceedings in the Sessions Court vide Civil Suit No. WA-B52-67-10/2020 ("Sessions Court Suit") on 05.10.2020, seeking declarations regarding the extension of the tenancy agreement.

[6] In the Sessions Court Suit, the plaintiff filed an application for interlocutory injunction. This application was dismissed by the Sessions Court. The Plaintiff appealed to the High Court vide Civil Appeal No. WA-12ANCVC-48-02/2021.

[7] In June 2021, the High Court dismissed the plaintiff's appeal and made additional orders requiring the plaintiff to vacate the premises by 30.09.2021 with provisions for double rental if the plaintiff failed to comply ("Impugned High Court Order").

[8] The plaintiff sought leave to appeal against the Impugned High Court Order to the Court of Appeal. This application was dismissed.

[9] Subsequently, the Plaintiff filed OS 1705 seeking to set aside the Impugned High Court Order on grounds of nullity due to lack of jurisdiction. The High Court dismissed OS 1705 for being an abuse of process. The plaintiff did not appeal against this dismissal.

[10] In March 2023, the plaintiff filed the present suit, again seeking to set aside portions of the Impugned High Court Order on similar grounds of nullity due to lack of jurisdiction.

[11] In the present application, the defendant posed certain questions for determination pursuant to Order 33 rules 2 and 5 of the Rules of Court 2012. In brief, the questions may be stated as follows:

- (a) whether this action filed by the plaintiff to set aside the Impugned High Court Order in Civil Appeal No. WA-12ANCVC-48-02/2021 is the same as another action previously filed through OS 1705 which was dismissed by the Kuala Lumpur High Court and therefore caught under the principle of *res judicata*,



- (b) if the answer to question (a) is in the affirmative, whether the plaintiff's claim against the defendant should be dismissed with costs, and
- (c) if the answer to question (a) is negative, whether the High Court Judge in deciding Civil Appeal No. WA-12ANCVC-48-02/2021 had jurisdiction to make further orders for the defendant.

### **Analysis and findings**

[12] The plaintiff's main contention was that the doctrine of *res judicata* did not apply as the OS 1705 was not disposed of on merits but on mere technicality. The plaintiff also argued that the present suit raised different causes of action from the previous proceedings.

[13] With respect, these arguments cannot be sustained. A careful examination of OS 1705 and the present suit revealed that both actions fundamentally seek the same relief, that was to set aside the Impugned High Court Order on grounds of nullity due to lack of jurisdiction.

[14] In OS 1705, the plaintiff specifically pleaded at paragraph 10(iii)(e) that the Impugned High Court Order was a nullity due to lack of jurisdiction. In the present suit, this identical ground was raised at paragraph 60 of the statement of claim.

[15] The principle of *res judicata* extends beyond cases decided purely on merits. The principle is trite. The doctrine creates an estoppel *per rem judicatum*. When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties are not permitted to litigate the same matter again. (See: ***Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd*** [1995] 3 MLJ 189 FC [1995] 3 CLJ 783; [1995] 3 AMR 2559; [1995] 1 MLRA 611).

[16] The Court of Appeal in ***Syarikat Duasama Sdn Bhd v Abdul Aziz Ibrahim & Ors*** [2018] MLJU 5 CA; [2018] MLRHU 73 further clarified that issue estoppel has wide application and may bar any party from raising any issue in subsequent proceedings which has been raised or could have been raised with reasonable diligence in the first proceedings.



[17] It is pertinent to note at this juncture that the High Court in dismissing OS 1705 specifically noted that it was an abuse of process and that the plaintiff should have pursued its remedies through the Court of Appeal.

[18] The plaintiff's argument that OS 1705 was dismissed on mere technicality was, with respect, misconceived. The dismissal for abuse of process was a substantive determination that the proceeding was improperly instituted. This determination carried *res judicata* effect.

[19] This position was supported by the recent Court of Appeal decision in **David Cheah Seng Chye v So Miao Song & Ors** [2023] 5 CLJ 20 CA; [2023] AMEJ 0387; [2023] 3 MLJ 726, where the court affirmed that when there is no appeal against a decision, a subsequent suit attempting to re-litigate the same issue is clearly barred by *res judicata*.

[20] Furthermore, the issue of jurisdiction was already raised before the Court of Appeal in the plaintiff's leave application as evidenced in their Affidavit Balasan Pemohon (2) dated 10.09.2021 and written submissions dated 18.09.2021. Despite extensive submissions on this point, the Court of Appeal dismissed the leave application.

[21] The plaintiff has had multiple opportunities to challenge the Impugned High Court Order through proper channels. Having exhausted these remedies, the plaintiff cannot now circumvent the principle of *res judicata* by initiating fresh proceedings on the same grounds.

[22] The present suit was clearly an attempt to re-litigate issues that have been conclusively determined. This fell squarely within the public policy consideration underlying *res judicata* - *interest rei publicae ut sit finis litium* (it is in the public interest that there should be finality in litigation). (See: *Asia Commercial Finance (supra.)*).

## Conclusion

[23] For the reasons stated above, I found that the plaintiff's present action was barred by *res judicata*.



[24] The matter was suitable to be disposed of by means of Order 33 of the Rules of Court 2012. In the circumstances, in addressing the first question, I would answer it in the affirmative. Having answered the first question in the affirmative, it must follow that the plaintiff's action must be dismissed. On the same basis, there was no necessity for this Court to address the remaining questions.

[25] In the circumstances, I dismissed the plaintiff's claim with RM20,000.00 costs subject to allocatur.

Dated 31 December 2024.

  
AHMAD SHAHRIR MOHD SALLEH  
JUDGE  
HIGH COURT OF MALAYA  
KUALA LUMPUR.

*For the Plaintiff:*

*Wee Yeong Kang  
(Messrs. Shafee & Co.)*

*For the Defendant:*

*Mohd Munzeer bin Zainul Abidin  
Mohammad Zaid bin Daud@Daud Yatimee  
Muhammad Ali Redha bin Ahmad Rashidi  
(Messrs. Yusfarizal Aziz & Zaid)*

